

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION
SEP 21 1999
JAMES W. McINNIS, CLERK
BY _____
DEPT. CLERK

**FRANK STEVENSON and REBECCA HARSHBERGER,
ADMINISTRATRIX OF THE ESTATE OF
MARY E. STEVENSON, DECEASED**

PLAINTIFFS

VS.

NO. H-C-99-166

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

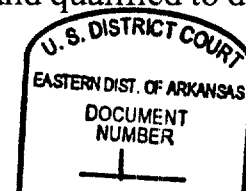
COMPLAINT AT LAW
This case assigned to District Judge _____
and to Magistrate Judge _____

Wilse
Young

Come the Plaintiffs Frank Stevenson and Rebecca Harshberger, as Administratrix of the Estate of Mary E. Stevenson, Deceased, by their attorneys, Easley, Hicky & Hudson, and for their cause of action against the Defendant, state:

Jurisdictional Statement

1. That Plaintiff Frank Stevenson and decedent Mary Stevenson were man and wife, and at the time of the collision complained of herein adult residents of Cross County, Arkansas. The Estate of Mary Stevenson is now pending in the Probate Court of Cross County, Arkansas. The Defendant Union Pacific Railroad Company, hereinafter called "Union Pacific", is and was at all times pertinent hereto a foreign corporation organized under the laws of the State of Utah and qualified to do business



in the State of Arkansas. The collision complained of herein occurred in Cross County, Arkansas. There exists complete diversity of citizenship, and the matter in controversy exceeds \$75,000.00. Jurisdiction of this Court is invoked pursuant to 28 USC Section 1332.

Facts and Allegations

2. On or about November 6, 1998, Plaintiff Frank Stevenson was driving his vehicle, a 1988 Nissan Pulsar, lawfully and cautiously westbound on State Highway No. 364 approximately 1/10th of a mile east of State Highway No. 1 in Vanndale, Cross County, Arkansas. His wife, Mary E. Stevenson was a passenger in the right front seat. Plaintiff was attempting to cross the Union Pacific railroad track, when, without any warning, the Plaintiff's vehicle was smashed and obliterated by Defendant's freight train, traveling southbound. The train that struck Plaintiffs was owned and operated by Defendant Union Pacific.

3. The collision and resulting damages to Plaintiffs were directly and proximately caused by the negligence of Defendant and/or its agents, servants and employees, while acting in the scope of their employment in that:

- (a) The Defendant Union Pacific failed to control and eradicate the brush and vegetation within the railroad's right-of-way, creating a dangerous condition, in violation of A.C.A. §23-12-201;
- (b) Defendant Union Pacific violated its common law duty to maintain its track free and clear of vegetation, so that a motorist's view is not obstructed;
- (c) Defendant Union Pacific allowed severe sight distance restrictions to exist at the intersection where Plaintiffs Frank Stevenson and Mary E. Stevenson were injured. Specifically, Defendant Union Pacific knew or should have known that there were severe obstructions which would obstruct a motorist's vision of a train, but the Defendant Union Pacific failed to take sufficient measures to either remove the obstacles or take active measures to warn a motorist of an oncoming train;
- (d) The Defendant Union Pacific failed to provide effective warning systems on the train so as to warn of the train's approach;
- (e) Defendant Union Pacific operated its train too fast for conditions.

- (f) The crossing where this accident occurred is an abnormally dangerous crossing in that (a) it is used frequently by the traveling public, and (b) trains travel over it frequently. Because of conditions existing at that time, a reasonably careful person can not use it with reasonable safety in the absence of special warnings, which warnings were not provided by Defendant, despite the fact that Defendant knew or should have known that said crossing was abnormally dangerous.
- (g) The train's horn was either not blown, or, in the manner in which it was employed, was of little or no use in warning the motoring public; and,
- (h) The Defendant did not institute or maintain routine precautions and procedures to protect the motoring public at the crossing in question.

4. That solely and proximately as a result of the negligence of the Defendant Union Pacific and/or its respective agents, servants, and employees, the Plaintiffs have been injured and damaged in the following particulars, to-wit:

As to Plaintiff Frank Stevenson:

- (a) Plaintiff sustained multiple trauma, including closed head injury, left hepatic artery avulsion requiring laparotomy and ligation, splenic laceration and a splenorrhaphy, right pneumothorax, right-sided pulmonary contusion requiring chest tube placement, left sacral wing fracture, superior inferior rami fracture, and other injuries;
- (b) Plaintiff's injuries have caused him pain, suffering, and mental anguish in the past, and will cause him same in the future;
- (c) Plaintiff has permanent scarring;
- (d) Plaintiff's injuries have caused him to incur medical bills and related expense in the past in the approximate sum of \$200,000.00; and will necessitate expenditure of future sums for medical and medical- related expense;
- (e) Plaintiff has lost income in the past, and will in the future, as he is is totally disabled;

for all of which he should be compensated.

As to Plaintiff Estate of Mary E. Stevenson, Deceased:

- (a) Plaintiff's decedent, Mary E. Stevenson, suffered fright and shock at the moment she realized she was about to be struck by a train, but could do nothing to save her life;
- (b) the heirs at law of the decedent have suffered shock, mental anguish, grief and despair as a result of the death of their loved one;
- (c) the Estate has incurred funeral expense and related medical expense;

for all of which the Estate should be compensated.

5. Plaintiffs demand a jury trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Frank Stevenson prays for judgment against Defendant Union Pacific Railroad Company for a sum in excess of \$75,000.00; Plaintiff Rebecca Harshberger prays for judgment for a sum in excess of \$75,000 upon the claim of the Estate of Mary Stevenson, deceased; both Plaintiffs pray for a jury trial; and for all other proper relief .

EASLEY, HICKY & HUDSON
Attorneys for Plaintiffs

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